IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 61 of 2005

Sunita A. More .. Petitioner
V/s.
Union of India & Ors. .. Respondents

Mr. D.H. Mehta with Mr. Utpal Joshi i/b. M/s. Thakordas & Madgavkar for the Petitioner
Mr. R.V. Desai, Sr. Counsel with Mr. R. Ashokan for the Respondents

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 14.01.2005

P.C.:-

1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents.

2. By this Petition, the Petitioner is challenging the proposed auction of flat no. 201, A-1 Building, 2nd Floor, Gangotri Sadan, Bangur Nagar Goregaon (W), Mumbai. It appears that the auction is proposed to be held on 17.1.1005 @ 3.00 pm. in pursuance of an advertisement in newspaper dated 3.1.2005. It appears that the Respondents have a claim of over Rs. 15 Lakhs towards the tax liability from the Petitioner's husband Mr. Ajit More. For recovery of the said sum, it appears that the above mentioned flat has been now put to auction.

3. The contention of the learned counsel for the Petitioner is that the aforesaid flat belongs to the Petitioner and the share certificate issued by the Society stands in her name in the Co-operative Society's record and also that there is a registered sale deed in her favour.

4. Shri Desai, the learned counsel appearing on behalf of the Respondents brought to our notice a statement recorded by the Income Tax Officer dated 10.4.2001, of the said Ajit D. More, wherein he has clearly admitted that the aforesaid flat belongs to him and that his wife is a housewife and is not doing any business activity and that he has also mentioned that she is the owner for name sake and that he has made the entire payment of the said flat. Over and above, Mr. Desai, the learned counsel for the Respondents brought to our notice that as far back as on 30.4.2004, the Petitioner was informed that the flat, though alleged to be in her name, the same was acquired by the said Ajit D. More out of his own funds and the Petitioner was only a benamidar of Shri Ajit More.

5. In these circumstances, the proper course for the Petitioner would be to approach the Income Tax Officer under Rule 11 of the Schedule II to the Income Tax Act, 1961. Under the aforesaid facts and circumstances, we are not inclined to interfere in the above. Writ Petition stands dismissed.

6. Parties to act on an ordinary copy of this order, duly authenticated by the Associate/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)